

Reasoning in Sharī‘ah

Importance in interpretation & explanation of sources of Islamic Law

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ABSTRACT

The core of Islamic legal science (jurisprudence: fiqh) consists of legal opinions based on reasoning which are supported by one or more of the primary or subsidiary sources (maṣādir) or proofs (adillah) of the Sharī‘ah. There is almost unanimous agreement among the scholars of the different schools of jurisprudence that the Qur’ān and the Sunnah (the Traditions) of the Prophet (peace be upon him) are the only primary sources. In view of the extreme complexity of the possible sources of legal provisions, there can be no complete consensus on the subsidiary sources. It emerges however from the different schools of jurisprudence that the most commonly accepted subsidiary sources are: Consensus of Opinion, Reasoning by Analogy, Equitable Discretion, and finally Interests. The main purpose of this article is to offer a detailed and clear analysis of the different aspects of the process of reasoning to form legal and judicial opinions and rulings according to the principles and rules of Islamic Law (Sharī‘ah).

The paper is divided into four parts. The first part of the paper introduces the importance of reason in Qur’ān and second part discusses the role of Reason in Sharī‘ah. Third part of the paper is about the role of reasoning in Sharī‘ah which describes reasoning as source for explanation of Qur’ān and Sunnah, ijmā‘, Qiyās, Istihsān, Istislāh, Istis’hāb and ‘urf. In the fourth part there is discussion of the scholars about the conditions required for the use of reasoning in Sharī‘ah which is followed by findings and conclusions of the whole discussion of the paper.

A chief purpose of Islamic law is comprehension of welfare of human beings especially Muslims with reference to their dealings both at individual and collective level being slave of Allāh Almighty. To allow interpretation in the rules governing mankind and to generate competition use of reason in explaining the rule is allowed by the Sharī‘ah. Reason is not only the means to check the authenticity and determine the exact meaning of the text, but it is also the means to determine the circumstances in which the texts should be applied.

Keywords: Reason, Sharī‘ah, Fiqh, Sources, Islamic Law.

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Introduction:

The Islamic law gives great emphasis upon the centrality Sharī‘ah which is Qur’ān and Sunnah of Prophet Muhammad (S.A.W). At the same time, it affirms with equal emphasis that the Holy Law is not given to man ready-to be passively received and applied; rather, it is to be actively constructed on the basis of those sacred texts which are its acknowledged sources. The Holy Law is the totality of rules which Allāh Almighty has given in Qur’ān and through Prophet Muhammad (S.A.W) for the governing of Man's behavior; it is the aggregate of aḥkām Sharī‘ah⁽¹⁾. Though ordained by Allāh Almighty, few of these rules have been precisely spelled out for man's convenience; rather, man has the duty derive them from their sources. In the standard Islamic metaphor, rules themselves are "branches" (furā‘) or "fruit" (thamarah), which grow out of "roots" (usūl), that is, from the sources. The process of extracting or deriving (istinbat, istithmār) legal rules from the sources of the Law is termed, with reference to its character as a human activity called reasoning through the effort of Ijtihād. Ijtihād literally means "self-exertion." In legal usage it refers to the jurist to formulate a rule of law on the basis of evidence (dalīl) the sources. Ijtihād is contrasted to Taqlīd, or "imitation," refers to the acceptance of a rule, not on the basis of evidence directly from the sources, but on the authority of other jurists. To the meaning of the term Ijtihād is the concept that the jurist involve a total expenditure of effort, a point more fully latter⁽²⁾. Ijtihād roughly corresponds to what in Western jurisprudence called "reason". The two terms are, of course different in definitions because their lexical meanings are not the same and Ijtihād includes an activity which is not normally subsumed interpretation. Nonetheless, there is a definite correspondence the two, for the greater part of the activities entailed indeed interpretive. Muslim scholars say that Islamic faith (I‘tiqād) has its own law. Both Islamic law and Islamic faith are derived, on the strength of belief (Imān) and reason (‘aql), from two basic sources (maṣādir) or proofs (adillah)⁽³⁾.

The Sharī‘ah, like the faith of which it is the authentic expression, is also definitive and all-embracing. The domain of the Sharī‘ah is not limited

⁽¹⁾ Alwazna, R. Y. 2013. Testing the precision of legal translation: The case of translating Islamic legal terms into English. *International Journal for the Semiotics of Law*, special issue the process of translabiliting: translating and transferring law, its concepts, notions and language, 26(4):897–907

⁽²⁾ Engberg, J. 2013. Comparative Law for translation: The key to successful mediation between legal systems. In *Legal translation in context: Professional issues and prospects*, ed. A.B. Albi, and F.P. Ramos, Bern: Peter Ling AG, International Academic Publishers, 9–25.

⁽³⁾ Hallaq, W.B. 1984. Was the gate of Ijtihād closed? *International Journal of Middle East Studies* 16 (1): 3–41

to the regulation of the lives of the people in this world, but it extends to the regulation of their destinies in the hereafter. It is the duty of all reasonable persons, who are the addressees (mukhātabūn) or obligors (mukallafūn) of the precepts of the Message ⁽¹⁾ to comply with these precepts and to adjust their veritable and variable needs and interests according to the rules and principles derived from the sources of the Sharī'ah. The ascertainment and authentication of the sources of the Sharī'ah and the formulation and deduction from these sources of the principles and rules which are most appropriate for the regulation of the changing needs and interests of the mukallafūn involve an integrated and continuing process of well-informed and careful constructive thinking and reasoning (Ijtihād). Reasoned rule-making and reasoned rule-application in accordance with the sources of the Sharī'ah are the life-blood of the science of jurisprudence (fiqh) and its sister science of foundations of jurisprudence (usūl Al-fiqh). Throughout its long and rich history, Islamic jurisprudence offers a very fine example of the outcome of the human effort to understand and implement the divine texts of the Qur'ān and the Sunnah of the Prophet (S.A.W) ⁽²⁾.

Importance of reason in Qur'ān:

The Qur'ān lays much stress on the necessity of making use of one's own reason both in matters of belief and action: "We have created for Hellfire many jinn and men; they have hearts, but understand not with them; they have eyes, but perceive not with them, they have ears, but they hear not with them. They are like cattle, nay, rather they are further astray. Those - they are the heedless ⁽³⁾. This verse describes the people who apparently have all the faculties of reason and perception, but deliberately refuse to make use of them. Such people deserve to go headlong into hell. They are, as it were, made for hell. Everyone shall be called to account for the use, misuse, or non-use of the faculties accorded to him, including his intellect. "And pursue not that thou hast no knowledge of; the hearing, the sight, heart- all of those shall be questioned ⁽⁴⁾, Knowledge in this verse refers to accepted belief, whether definitive or presumptive gained through reliance on a certain evidence or support (sanad). The understanding of the faith and of the Sharī'ah is not an exclusive of any person or group of persons: "The mere idea of a priesthood to stand between God and man and to be the repository secrets is derogatory to the goodness and all pervading. Islam

⁽¹⁾ Hallaq, W.B. 2009. An introduction to Islamic Law. Cambridge: Cambridge University Press

⁽²⁾ al-Ashqar, Muhammad Sulaymān, Al-Wāḍih fī Usūl Al-Fiqh, 3rd edn, 1987, Al- Dār Al-Salafiyyah, Kuwait

⁽³⁾ Al-Qur'ān, al-A'rāf, 179

⁽⁴⁾ Al-Qur'ān, al-Isrā', 36

prescribes that the believers should think independently in order judgments, free of the influence of predecessors (salaf), priests (ahbār) and tyranny of any power ⁽¹⁾. At the same time, Islam prescribes an obligation to respect the parents. An obligation to seek information from the wise and those who possess the Message, and an obligation to obey the people of authority (O you who believe, obey God and obey the Messenger and authority among you; if you differ in anything among yourselves, refer Messenger, if you do believe in God and the last day. That is best, and most suitable for determination ⁽²⁾

The rules of the Sharī‘ah are intended to be complied with by reasonable should be capable of understanding their meaning, objectives and the conditions for which they are made. Reasonable people are different from animals whose role is confined to just receiving orders and discharging intellectual or creative effort. Reasonable people should respect their parents, extent of obeying them blindly. Reasonable people should seek the advice know, but they should be able to realize that it is futile to consult the people who know becomes apparent that those people are unwilling (or not prepared) to use the proper way of what they know. A lay person, endowed with the gift of reason, should whether a certain scholar is sincere or a hypocrite. Reasonable people should obey the authority, but not to the extent of disobeying the orders of Allāh ⁽³⁾. Rather people of reason obey the authority in order to explain and spread the orders of Allāh Almighty.

Role of Reason in Sharī‘ah:

Reason is not only the means to check the authenticity and determine the exact meaning of e text, but it is also the means to determine the circumstances in which the texts should be applied. It is well settled that any legal opinion (fatwá) should be developed varied or adapted in the light of changing conditions and circumstances at different times and in different places. This fundamental principle is as old as the early formative period of Islamic jurisprudence. The second rightly-guided Caliph 'Umar is well known for his method of giving due consideration to changes of circumstances. For example, he saw no point in continuing the practice of giving money or material benefits to those whose hearts are to be conciliated because he believed that there was no need, after the spread of Islam in the Arabian Peninsula, to gain new sympathizers through such practice. 'Umar

⁽¹⁾ Ibn ‘Ashūr, Al-Tāhīr, Maqāsid Al-Sharī‘h Al-Islāmiyyah) 1978, Al-Sharikah Al-Tūnisiyyah Li Al-Tawzī‘

⁽²⁾ Al-Qur’ān, Al-Nisā’, 59

⁽³⁾ Faḍal, Muḥammad. 2000–2001. Book Review: “Analogical reasoning in Islamic jurisprudence: A study of the juridical principle of Qiyās by Aḥmad. Journal of Law and Religion 1/2(15): 359–62.

also took the decision, after consulting with the Companions, not to distribute the arable lands of Iraq among the Muslim soldiers who participated the conquest of that country. 'Umar argued that the non-distribution of those lands would ensure it's the long run the earning by (bayt Al-māl) of a renewed income in the form of taxes which could the native holders of those lands ⁽¹⁾. 'Umar was also known for his firm considering the repudiation (ṭalāq) pronounced thrice at one time as not only as once valid as was the prevailing view, in order to discourage from pronouncing thrice divorce lightly or without careful thought. Even in matters of ritual worship (ibādah) the conditions prevailing places should be taken into account. For example, many scholars say that the Muslims living in the places not have a daily sunrise and a daily sunset should perform every 24 hours daily prayers and should fast and break the fast during the holy month according to the time of prayers and the times of fasting and breaking the nearest place which has a daily sunrise and sunset ⁽²⁾.

Reason and sources of Sharī'ah:

Reasoning is the process, through which a link is established between the immutable and limited texts of the Sharī'ah on the one hand, and the countless facts, events, and situations on the other. The all-pervading character of Islamic jurisprudence made it absolutely necessary to exercise reasoning for the interpretation of Sharī'ah in one form or another even during the period which is usually called the period of stagnation (jumūd) and imitation. Reason without any doubt plays vital role in Sharī'ah and its interpretation with the name of Ijtihād in Fiqh. According to the experts of Islamic law Islamic faith has its own law: the Islamic Sharī'ah ⁽³⁾. Both Islamic law and Islamic faith are derived, on the strength of belief (Imān) and reason ('aql), from two basic sources Qur'ān and Sunnah and interpretation of these two fundamental sources called secondary sources e.g Ijmā' (Consensus), Qiyās (Analogy) Istishān (Discretion), 'urf (Custom) based on reasoning of Ijtihād But this is fact that both revelation and reason have prominent place in legal system of Islamic Sharī'ah. The articles of religious belief are derived, according to him, from revelation, and the function of reason is to understand them correctly ⁽⁴⁾. Allāh Almighty as law giver has purposely set out a number of legal rulings in these two revealed legal sources called Qur'ān and sunnah of Prophet Muhammad (S.A.W),

⁽¹⁾ Al-Ghazālī, Muhammad bin Muhammad. 1993/1413. Al-Mustaṣfā min 'ilm al-usūl (Muhammad Abdul Salām Abdul Shāfi, Ed.). Beirut: Dār Al-Kutub Al-'Ilmiyyah

⁽²⁾ Ibid

⁽³⁾ Hallāq, Wael B. Authority, continuity and change in Islamic law. Cambridge: Cambridge University Press. 2004

⁽⁴⁾ Ibid

and put together them in such a way which is open to reasoning and juristic interpretation so that the law becomes legally valid with no effect of change in time and circumstances.

Reasoning as source for explanation of Qur'ān and Sunnah:

The first basic source of Islamic law and Islamic faith is the Qur'ān: the Book (Al-Kitāb) revealed by God (Allāh) to His chosen last Prophet Muhammad (S.A.W) and Messenger through the Angel Gabriel. The second source is the Sunnah of the Prophet which consists of his sayings, actions and expressions. The faith is perfect and espousal. It provides guidance for the assessment and judgment of all beliefs and actions of all men and women in all places and at all times. Qur'ān as word of Allāh Almighty is no doubt placed as foremost and ultimate source of Sharī'ah in law making process. Qur'ān is not only gives the instructions for Sharī'ah as it also addresses the concepts of human belief system, description of previous nations and prophets as reminder of lessons from their stories. But in spite of all its comprehension Qur'ān as source of Islamic law address the legal code of conduct for human beings in general and for the believers in particular. About five hundred of the Qur'ānic verses express the set of legal code of conduct for Muslim society applied by interpretation of any time and circumstances ⁽¹⁾. Human interpretation should base on reasoning for the sake of explanation not to check the authenticity of the text of Qur'ān. The readers of the Qur'ān can rely on the help of different kinds of interpretations, ranging from the short (such as Tafsīr Al-Jalālayn) to the expanded (such as Tafsīr Al-Qurṭubī or Tafsīr Ibn Kathīr). The readers of Hadiths very wide range of books dealing with the interpretation. Sunnah of Prophet Muhammad (S.A.W) as second and core basic source of Sharī'ah represents all about the sayings, actions, and expressions of Prophet Muhammad (S.A.W) especially for the formulation of narratives called Hadith⁽²⁾. As for as the legal status of Sunnah of Prophet Muhammad (S.A.W) is concerned it deals with all the rulings given by the sayings, practices, and expressions of Hadith in different perspectives and when Prophet Muhammad (S.A.W) followed, instructed, or expressed any thing about the worships and social dealings. Additionally in law making process the legal content described in Qur'ān and explained in Sunnah require interpretation of the time and circumstances accordingly for the application of that situation and time. In other words it can be said that Qur'ān and

⁽¹⁾ Al-Bayḍāwī, Anwar Al-Tanzīl wa Asrār Al-Ta'wīl (coedited on by al-Kazamī), a new reprint by Mu'assasat Al-Sha'bān Beirut, 1988

⁽²⁾ Ballantyne) William M., (a) "The Shari'ah and its Relevance to Modern Transnational Transactions", Arab Comparative and Commercial Law, 1987, Graham & Trotman, London, vol. 1

Sunnah of Prophet (S.A.W) can be explained by the interpretation of the experts based on reasoning. But point to be noted that this interpretation cannot check the authenticity of instructions rather its explanation and application ⁽¹⁾. The divine nature of the two principal sources of the Sharī'ah, whether in the form of the Qur'ān or the Sunnah of the Prophet, does not exclude the human contribution of the jurists in its various forms, ranging from ascertaining authenticity of the revealed texts and then interpreting them, to giving legal opinions about the matters which are not directly covered by these texts. The various intellectual efforts exerted by the jurists to authenticate, interpret and apply the immutable divine texts are designated under the generic term of Ijtihād ⁽²⁾. The rulings of Sharī'ah can be divided into five legal practices called, Haram (Prohibited), Makrūh (Disliked), Mustahabb (Liked), Mubāḥ (Recommended), Farḍ (Obligatory). So far as the rulings of obligatory practices and prohibited are clearly mentioned in Qur'ān and Sunnah of the Prophet Muhammad (S.A.W). However the rulings related to recommended, liked and disliked in a certain application can be decided by reasoning.

Subsidiary sources and reasoning:

Each event (hādithah, nāzilah) is subject to a legal instructions of Sharī'ah. As the events are limitless and the texts (nuṣūṣ) of the Qur'ān and the Sunnah are limited, the subsidiary sources are essential for determining the legal provisions applicable the events ⁽³⁾. The most important subsidiary sources accepted by most scholars are the following: consensus of opinion (Ijmā'); reasoning by analogy (Qiyās); equitable discretion (Istihsān); interest (muṣṭalahah); custom and usage ('urf); opinions of the Companions (aqwāl-e-Ṣaḥābah); preceding revelations (Sharā'i'man qablanā) and presumption of continuance (Istiṣḥāb).

Consensus and reasoning:

Consensus of Opinion (Ijmā') means the unanimous agreement, after the death of the Prophet, of all the learned scholars having the capacity of independent and original legal reasoning or thinking (Mujtahidūn) or of all the people having the power to loosen and bind, i.e., the leading personalities having the power of decision-making, on any matter of religion or worldly affairs. The consensus thus reached cannot be varied or repealed by a subsequent. The possibility of an agreement of all the jurists of any historical period is not easy to materialize. Some scholars say that the

⁽¹⁾ Cardozo, Benjamin N., The Nature of the Judicial Process, 31st printing, 1971, Yale University Press, New Haven and London

⁽²⁾ Ibid

⁽³⁾ Dias, R. M. W., Jurisprudence, 4th edn, Butterworths, London, 1976

only possible consensus of opinion was the consensus of the Companions of the Prophet (S.A.W). Some others say that even in the generations of the Companions there had never been an agreement of all the Companions on any certain question: A review of the events upon which the Companions formed unanimous opinions shows that those opinions were expressed by the Companions who were present and who were consulted about those events. The truth is that the real characteristic of such opinions which distinguish them from other jurisprudential opinions, is that they express the outcome of consultation and not the view of an individual ⁽¹⁾. Furthermore, since consensus of opinion should be based on a proof (dalīl), such proof may either be conclusive, and in such case arises no need for consensus of opinion to give to it more weight (as such proofs are the weightiest proofs), or merely presumptive (Ẓann) and in such case it is highly improbable that all or at least majority of the Mujtahidīn would agree on it.

Reasoning by analogy (Qiyās):

Reasoning by analogy (Qiyās) means extending the legal principal event in order to derived solution on the ground ('illah) of application of the legal provision to the principal respect of the derived event. For example, the prohibition of drinking wine (Baqarah, 219 and 5 al-Mā'idah, 90,) is extended by analogy alcoholic drink, such as whisky and beer, on the ground that intoxication. The analysis of deduction by analogy shows that it comprises on four elements; including; (a).The principal event (drinking wine); (b) The derived event (drinking beer or whisky); (c) The legal provision applicable to the principal event (prohibition); and (d) The cause which is common to the principal event and the derived event intoxication or stupefaction ⁽²⁾.

Reasoning and Istiḥsān

Equitable discretion (Īstiḥsān) means the application of a certain rule, established by analogy or by a text, to a certain situation or event, on the ground that such application would lead to injustice or hardship. Equitable discretion (Īstiḥsān) means the application of Ijtihād discretion to exclude the application of a certain rule, established by analogy or by a text, to a certain situation or event, on the ground that such application would lead to injustice or hardship. For example, it could be inferred from the texts relating to succession that the wife who has been repudiated irrevocably (ṭalāq bā'in) during the terminal illness of her husband, is not entitled to a

⁽¹⁾ Ḥasān, Aḥmad. The doctrine of Ijmā': A study of the juridical principle of consensus. New Delhi: Kitab Bhaban, 2003

⁽²⁾ Ghānīm, 'Iṣām, Outlines of Islamic jurisprudence, 1983, Saudi Publishing and Distributing House

legal share in his inheritance. But as this result is too harsh for the repudiated woman, the majority of jurists (of the Ḥanafī, Mālikī and Ḥambalī; schools) give to her, on ground of *Istiḥsān*, a share ill the estate of her former husband provided, according to the Ḥanafīs, he dies during the waiting period (*‘iddah*) or provided, according to the Ḥambalīs) she does not remarry. The Mālikīs ensure defeat of the fraudulent intention of husband in any event by not excludible the woman from his inheritance even if she marries again ⁽¹⁾.

Reasoning and public interest (*Istiṣlāḥ*).

Sharī'ah in its entirety is secure benefits and to Public interest (*Istiṣlāḥ*) which is another legal practice contained within legal reasoning. This means that a jurist should take into consideration, within the framework of the basic principles and ends of the Sharī'ah, all the interests, whether individual or collective, which are worthy of protection. The creative role of interest appears in the area which is not directly governed by the texts, consensus of opinion, analogy, and equitable discretion, i.e., in the area where there is no pre-established restriction on the recognition or non-recognition by the worthiness or unworthiness of the adoption or rejection of specific regulatory measures or expedients of legal policy (*siyāsah shar'iyah*). For example) the government may require, for the purpose of certainty, that all marriages should be authenticated and registered in a special register by a qualified public officer ⁽²⁾.

Reasoning in use of Custom (*‘urf*).

Custom and usage (*‘urf*) as a source of Sharī'ah means formulation of a legal provision or criterion, or the interpretation of a text of the Qur'ān, the Sunnah or consensus of opinion in accordance with a prevailing model of behavior or social understanding or mode of expression, whether general people at large in all places and localities or special to a special trade or profession or to the people of a certain place or locality. Some scholars distinguish between custom (*‘urf*) and usage (*‘ādah*). While in usage the repetition of a certain model of behavior in certain circumstances is purely mechanical, in custom such repetition implies reasonable acceptance or conviction of such model of behavior. This distinction is linguistic; the jurists give usage (*‘ādah*) the same meaning as custom (*‘urf*) and make no distinction between these two terms in their writings ⁽³⁾. The model

⁽¹⁾ Kamālī, Muhammad Ḥāshim. 1991. Principles of Islamic jurisprudence. Cambridge: Islamic Text Society

⁽²⁾ Al-Kawākibī, ‘Abdul Rahmān, Ṭabā’i‘ Al-Istibdād: reprint, 1993, Al-Hay’ah Al-Miṣriyyah Al-‘Āmm Lil-Kitāb, Cairo

⁽³⁾ Kamālī, Muhammad Ḥāshim, Principles of Islamic 3: jurisprudence) Revised edn, 1991, Islamic Texts Society, Cambridge

of behavior must have been constant and consistently followed by the people at large (in the case of general custom) or by the people of a certain locality or a certain trade. The model of behavior should not contradict any definite (qaṭʿī) rule of the Sharīʿah. The texts of the Sharīʿah which were made in the light of the prevailing custom should be interpreted as incorporating any prevailing custom ⁽¹⁾.

Reasoning in use of Presumption of continuance (Istiṣ'hāb).

Presumption of continuance (Istiṣ'hāb) is more a rule of evidence than a rule of substantive Sharīʿah. This presumption means that a legal provision or condition which is prevailing at a certain original point of time will be presumed to be existing at any later time until it is proved that such provision or condition has ceased to exist. The presumption should be continuance of the original freedom of action enjoyment of all pleasures and utilization of all things and resources. The presumption should be continuance of existing situation or condition. The presumption should be continuance of the validity or invalidity of transactions. For example, a contract which has been proved to be valid and effective will be presumed to be valid and effective and in full force until it is proved that it is not valid or that it is not in full force and effect. The presumption should be continuance of a certain description or qualification ⁽²⁾. For example, a missing person whose whereabouts are not known (mafqūd) will be presumed alive until the contrary is proved.

Conditions required for the use of reasoning in Sharīʿah.

Everyone can enjoy the facility of reasoning in Sharīʿah but there are some certain conditions for the person to exercise the use of reasoning in the interpretation of Sharīʿah. According to requirements of Sharīʿah and its expert scholars only qualified Mujtahidīn can use reasoning for the interpretation of Sharīʿah. Additionally the one who possess the following attributes qualifies for the use of reasoning.

- Reasoning is based on foundations of Qur'ān and Sunnah of the Prophet (S.A.W) so the one who uses reasoning in deriving law from Qur'ān and Sunnah should have a good knowledge of the Qur'ān. He should in particular know those verses of the Qur'ān which are legally relevant, such as the verses relating to marriage and divorce, successions, legal punishments for the offences of theft, highway robbery, adultery and defamation. According to Some scholars he/she should learn the Qur'ān by heart so that he may be able to

⁽¹⁾ Ibid

⁽²⁾ Khallaf, 'Abdul Wahhāb, 'Ilm Usul Al-Fiqh, Dar Al-Qalam, Kuwait, 1978

find promptly the relevant Qur'ānic verse which he is looking for. Some other scholars say that what really matters is that the mujtahid should be sufficiently trained in consulting the Qur'ān usefully⁽¹⁾.

- The mujtahid should know the legal rules which are derived from the Sunnah of the Prophet. This requires the knowledge of the texts (Matan) and supports (Asanād) of all the Hadith which are legally binding or relevant.
- The mujtahid should know the texts of the Qur'ān and the Sunnah which have been the subject of abrogation (Naskh) during the period of revelation.
- The mujtahid should know all the questions which have long been settled by consensus of opinion (ijmā') and the questions in respect of which consensus of opinion has not yet been reached. In addition to his duty to follow the previous consensus of opinion, the mujtahid should show due respect to the opinions and views of other mujtahid⁽²⁾.
- The mujtahid should know how to apply analogy (Qiyās). That he should be familiar with the different kinds and types of addition to the subtle distinctions between causes (ḥikmah) in certain legal provisions. In particular, the mujtahid aware that the extension of the provision of the principal event (aṣl) derived event (far') on the basis of the presence of the cause (or the where appropriate) of the principal event in the derived event thorough knowledge of the needs and interests of the people, the ends purposes of the Sharī'ah and the basic principles upon which the is founded.
- The mujtahid should have a good command of the Arabic language. This involves an advanced knowledge of Arabic grammar (naḥw) and inflection (ṣarf), Arabic syntax, eloquence of style and rhetoric⁽³⁾.
- The mujtahid should have sufficient knowledge of the rules and principles of the science of foundations of jurisprudence, the mujtahid should know the ends and purposes of the Sharī'ah.

In general, the mujtahid should really be well trained in the difficult deducting (istinbāt) the legal rules from their proofs or sources. In the case of deduction by analogy (Qiyās), the mujtahid should be able to

⁽¹⁾ Abul-Majd, Ahmad Kamal, (a) "The Application of the Sharī'ah", Arab Comparative and Commercial Law, 1987, Graham & Trotman, London, vol. 1

⁽²⁾ Ibid

⁽³⁾ Maḥmaṣānī, Ṣubḥī, Al-Mujtahidūn Fil-Qaḍā', 1980, Dār Al-'Ilm lil-Malayīn, Beirut

check thoroughly the real or effective cause of the principal event or aṣl and where the texts are silent, to extract the real cause of event (Takhrīj Al-manāṭ) on the basis of reason, common sense and the general of the Sharī'ah. Then the mujtahid should be able to verify that the cause provision of the principal event actually exists in respect of the derived that the provision of the principal event can be extended by analogy to event or far' called Tahqīq Al-Manāṭ in Arabic ⁽¹⁾.

Findings:

Based on the discussion and description of above said points followings are the findings of the whole research.

- Sharī'ah which is based on teachings of Qur'ān and Sunnah of Prophet Muhammad (S.A.W). At the same time, it affirms with equal emphasis that the Holy Law is not given to man ready-to be passively received and applied; rather, it is to be actively constructed on the basis of those sacred texts which are its acknowledged sources called subsidiary sources. In the standard Islamic metaphor, rules themselves are "branches" (furū') or "fruit" (thamarah), which grow out of "roots" (usūl), that is, from the sources.
- The process of extracting or deriving (istinbat, istithmār) legal rules from the sources of the Law is termed, with reference to its character as a human activity called reasoning through the effort of Ijtihād. Ijtihād roughly corresponds to what in Western jurisprudence called "reason."
- The Qur'ān lays much stress on the necessity of making use of one's own reason both in matters of belief and action. Teachings of Islam prescribes that the believers should think independently in order judgments, free of the influence of predecessors (salaf), priests (aḥbār) and tyranny of any power.
- The rules of the Sharī'ah are intended to be complied with by reasonable should be capable of understanding their meaning, objectives and the conditions for which they are made. Reasonable people are different from animals whose role is confined to just receiving orders and discharging intellectual or creative effort.
- Reason is not only the means to check the authenticity and determine the exact meaning of e text, but it is also the means to determine the circumstances in which the texts should be applied. It is well settled

⁽¹⁾ Philips, Abū-Amīna Bilāl, The Evolution of Fiqh, 1990, Tawḥīd Publications, Klyaa

that any legal opinion (fatwá) should be developed varied or adapted in the light of changing conditions and circumstances at different times and in different places. This fundamental principle is as old as the early formative period of Islamic jurisprudence.

- Reasoning is the process, through which a link is established between the immutable and limited texts of the Sharī'ah on the one hand, and the countless facts, events, and situations on the other. The all-pervading character of Islamic jurisprudence made it absolutely necessary to exercise reasoning for the interpretation of Sharī'ah in one form or another even during the period which is usually called the period of stagnation (jumūd) and imitation.

Conclusion:

Reasoning is the process, through which a link is established between the immutable and limited texts of the Sharī'ah on the one hand, and the countless facts, events, and situations on the other. After the end of direct non-Muslim rule in most Muslim countries most Muslim jurists preferred to ensure the continuing application of the Sharī'ah and the study of Islamic jurisprudence through a careful review of the legal legacy of the colonial era in order to bring the positive legal systems in line with the principal and immutable rules of Islam. Change and development of the provisions of Islamic jurisprudence are inevitable. Time and its effects must be recognized and given the attention they deserve. This is a consequence of the law of nature as ordained by Allāh Almighty. There is a growing awareness of the need for use of reasoning in the field of Islamic law as a result of the realization that many frictions, misunderstandings and conflicts of opinion on certain questions can be avoided or at least mitigated if people were given a simplified account of how the Islamic legal system works or should work in practice of reasoning. It is remarkable that though Islamic faith is taught in primary and secondary schools in most Muslim countries, there is no similar concern, except in a few countries, for the teaching of the basics of Islamic jurisprudence and foundations of jurisprudence. What the Muslims need today is not a new method but a powerful mentality capable of understanding and dealing with Islam by following the Islamic methods and practice of the early centuries of Islam. This much-needed kind of mentality cannot be borrowed from the East or the West or otherwise fashioned by the introduction of different alien methods picked and chosen at random from here or there. The only way towards the cultivation of appropriate Islamic methods is to educate Muslims to learn the invaluable lessons of the Qur'ān, Sunnah and early Ijtihād based on reason. There is no doubt that Ijtihād based on reason was a

pure product of Islamic thought and cannot be considered a by- product of the alien Greek logic and thought.

